IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.369 OF 2006

IN

NOTICE OF MOTION NO.2107 OF 2006

IN

B.C.C.C. L.C. SUIT (STAMP) NO.2367 OF 2006

WITH

CIVIL APPLICATION NO.460 OF 2006

Arvind Gover Khutiya ...Appellant

Versus

The Municipal Corpn. of Gr.Bombay ...Respondent

.....

Mr.Dhanesh R.Shah for Appellant.

Mrs.Geeta Joglekar for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 7, 2006.

P.C.

1. Heard Counsel for the parties. Perused relevant documents on record.

2. Admit. Ms.Joglekar waives notice for

Respondent.

3. As short question is involved, Appeal is taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the order passed by the City Civil Court, Bombay dated 29th May 2006 refusing to grant ad-interim relief as prayed by the Appellant. The principal grievance of the Appellant is that the Appellant had submitted documents as was required under letter dated 26th April 2005 issued under the signature of Assistant Engineer, Building and Factory, A-Ward addressed to the Appellant. The said letter was received by the Appellant on 9th May 2006. As per the said letter, the Appellant was obliged to submit documents within a period of one month therefrom. The case of the Appellant is that the Appellant submitted relevant documents under the covering letter dated 22nd May 2006, which fact has been acknowledged as is seen from the copy of the document at page 70 of the paper-book. It is the case of the Appellant that without considering the said documents, the

Authority proceeded to decide the matter on 29th May 2006. The fact that those documents have been overlooked or rather not considered, can be discerned from the order of the Authority.

5. Prima facie, there is substance in the grievance made on behalf of the Appellant as referred to above. In my opinion, therefore, it was a case for ad-interim relief. Thus understood, the impugned Judgement and Order passed by the Trial Court is set-aside and instead, ad-interim relief is granted in favour of the Appellant/Plaintiff in terms of prayer clause (a) of the Notice of Motion, which will continue till further orders to be passed by the Trial Court after pleadings are exchanged between the parties.

6. It is made clear that the Notice of Motion will be decided on its own merits in accordance with law, uninfluenced by any observations made in the order passed by this Court today.

7. Accordingly, Appeal is allowed on the above terms. No order as to costs.

8. Trial Court is directed to expedite the Notice of Motion to be disposed of finally preferably by end of September 2006. This observation is made on the assurance given by the parties through Advocates to this Court that they will extend necessary cooperation to the Trial Court for early disposal of the Notice of Motion.

A.M.KHANWILKAR, J.